

01
02
03
04
05
06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 JOSEPH S. PIGOTT,) CASE NO.: C07-599-JCC-MAT
09)
Petitioner,)
10)
v.) ORDER RE: PLAINTIFF'S MOTIONS
11)
RICHARD MORGAN,)
12)
Respondent.)
13

14 Petitioner, who is incarcerated in the Prairie Correctional Facility in Appleton, Wisconsin,
15 has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging a conviction
16 entered against him by a Washington state court. (Dkt. #4). The Court has directed respondent
17 to file an answer to the habeas petition. (Dkt. #3). Petitioner has also filed the following motions:
18 motion for evidentiary hearing (Dkt. #5), motion for appointment of counsel (Dkt. #6), and motion
19 for transfer. (Dkt. #7). Having reviewed the motions and the balance of the record, the Court
20 does hereby ORDER as follows:

21 (1) Rule 8(a) of the Rules Governing Section 2254 Cases in the United States District
22 Courts provides that an evidentiary hearing may not be held until after the court has reviewed

ORDER RE: PLAINTIFF'S MOTIONS
PAGE -1

01 respondent's answer and the state court record. *See* Rule 8(a), Rules Governing Section 2254
02 Cases in the United States District Courts. Respondent has not yet filed his answer. Accordingly,
03 plaintiff's motion for evidentiary hearing (Dkt. #5) is DENIED as premature. The Court will hold
04 an evidentiary hearing, if necessary, after reviewing respondent's answer and petitioner's reply.

05 (2) Petitioner's motion for appointment of counsel (Dkt. #6) is DENIED. There is no
06 right to have counsel appointed in cases brought under 28 U.S.C. § 2254, unless an evidentiary
07 hearing is required. *See McCleskey v. Zant*, 499 U.S. 467, 495 (1991); Rule 8(c) of the Rules
08 Governing Section 2254 Proceedings for the United States District Courts, 28 U.S.C. foll. § 2254.
09 Although the court may exercise its discretion to appoint counsel for a financially eligible
10 individual where the "interests of justice so require" under 18 U.S.C. § 3006A, petitioner fails to
11 demonstrate that the interests of justice would be best served by appointment of counsel in this
12 matter. If the Court later orders an evidentiary hearing, the court will appoint counsel.

13 (3) In his motion for transfer, petitioner requests that the Court order respondent to
14 transfer petitioner to a prison in Washington State. As reasons for the transfer, petitioner cites his
15 desire to be closer to his family, to be in a minimum security prison, and to have greater access to
16 the courts. (Dkt. #7 at 2). Petitioner's request for a transfer to ameliorate his conditions of
17 confinement is not a cognizable claim in a habeas petition, whose sole purpose is to challenge the
18 fact or duration of confinement. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973); *Wilkinson*
19 *v. Dotson*, 544 U.S. 74, 81-82 (2005). Accordingly, petitioner's motion for a transfer (Dkt. #7)
20 is DENIED. If petitioner wishes to contest issues related to the conditions of his confinement, he
21 must do so by filing a civil rights lawsuit under 42 U.S.C. § 1983, in the federal district court
22 nearest his current place of incarceration.

01 (4) The Clerk is directed to send a copy of this Order to petitioner, to counsel for
02 respondent, and to the Hon. John C. Coughenour.

03 DATED this 27th day of April, 2007.

04 

05 Mary Alice Theiler
06 United States Magistrate Judge